

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL GARNICA-MELGOZA,

Plaintiff,

ADAM FORTNEY, et al.,

Defendants.

CASE NO. C22-0392 BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 39, and

Plaintiff Daniel Garnica-Melgoza's Objections to the R&R, Dkt. 40.

Garnica-Melgoza sued three Snohomish County police officers, Adam Fortney,

Evan Twedt, and Grant Kendall, arguing that they used excessive force in violation of the

Eighth and Fourteenth Amendments to the U.S. Constitution when they shot fifty rounds

into his vehicle during a high-speed chase. Dkt. 5. Garnica-Melgoza sought appointment

of counsel after he filed his complaint. Dkt. 6. Judge Creatura denied that motion without

prejudice, concluding that Garnica-Melgoza failed to show he faced “exceptional

"circumstances" warranting appointment of counsel in a civil matter Dkt. 9

1 Defendants Fortney and Kendall moved to dismiss Garnica-Melgoza's complaint
2 in May 2022, arguing that he failed to state a claim and that his claims are barred by *Heck*
3 *v. Humphrey*, 512 U.S. 477, 486–87 (1994), collateral estoppel, and the *Rooker-Feldman*
4 doctrine. Dkt. 16 at 1. Garnica-Melgoza again moved for court-appointed counsel, Dkt.
5 21, and Judge Creatura again denied that motion, Dkt. 33.

6 Garnica-Melgoza then moved to voluntarily dismiss his complaint, without
7 prejudice. Dkt. 35. He argued that voluntary dismissal without prejudice was appropriate
8 because his is currently incarcerated at the Washington State Penitentiary where he lacks
9 access to a law library, the person who had been helping him draft legal documents was
10 moved into a different unit, he needs help drafting documents because he is not a native
11 English speaker, he has been denied appointment of counsel, and he is suffering from
12 mental health issues including bipolar disorder. *Id.* at 1. In that motion, Garnica-Melgoza
13 indicated that he wanted to wait for his release from custody in nine months to pursue his
14 case. *Id.* at 2. Defendants opposed Garnica-Melgoza's motion and argued that the Court
15 should instead rule on their motion to dismiss, dismiss the complaint with prejudice, and
16 "make a finding of a second 'strike' against Plaintiff pursuant to 28 [U.S.C.] § 1915(g)." Dkt. 37 at 1.

18 Judge Creatura's R&R concluded that Defendants would not suffer prejudice if the
19 Court granted Garnica-Melgoza's motion and he therefore recommended that the Court
20 grant that motion, deny Defendants' motion to dismiss as moot, decline to find a second
21 strike under § 1915, and dismiss Garnica-Melgoza's complaint without prejudice.
22 Garnica-Melgoza filed "Objections," but those objections dispute Defendants' response

1 to his motion rather than Judge Creatura's R&R. Dkt. 40. He agrees with the outcome of
2 Judge Creatura's R&R and no other objections were filed.

3 The district judge must determine de novo any part of the magistrate judge's
4 disposition that has been properly objected to. The district judge may accept, reject, or
5 modify the recommended disposition; receive further evidence; or return the matter to the
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3). There are effectively no
7 objections to Judge Creatura's R&R and the Court does not disagree with the outcome.

8 The Court having considered the R&R, Plaintiff's objections, and the remaining
9 record, does hereby order as follows:

- 10 (1) The R&R is **ADOPTED**;
- 11 (2) Garnica-Melgoza's Motion for Voluntary Dismissal, Dkt. 35, is
12 **GRANTED**;
- 13 (3) Defendants' Motion to Dismiss, Dkt. 16, is **DENIED as moot**;
- 14 (4) Garnica-Melgoza's claims are **DISMISSED without prejudice**;
- 15 (5) The Clerk is directed to send copies of this Order to Garnica-Melgoza,
16 counsel for Defendants, and to Judge Creatura; and
- 17 (6) The Clerk shall enter a **JUDGMENT** and close the case.

18 Dated this 12th day of August, 2022.

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BENJAMIN H. SETTLE
United States District Judge